

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2766 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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LN JADAV - Petitioner(s)
Versus
URBAN DEVEP.& URBAN HOUSING DEVELOPMENT DEPT -
Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner(s) : 1,
MS ARCHANA RAVAL, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 24/04/2006

ORAL JUDGMENT

1.In the present petition, the petitioner though had earlier made several prayers, as recorded in the order dated 21.4.2006 passed by this Court, confined his

challenge to the impugned order of penalty dated 5th May 1994. By the said order, the petitioner by way of penalty came to be reverted to the lower post for a period of one year. By a subsequent communication dated 23rd May 2004, the petitioner as a consequence of the impugned penal order came to be posted on the post of Deputy Town Planner (Junior) Class II in Bhavnagar Municipal Corporation. Thus effectively, the petitioner was ordered to be reverted to the lower post of Deputy Town Planner (Junior) Class II for a period of one year.

2. Learned advocate Shri Jani submitted that the petitioner at the relevant time was holding the post of Senior Deputy Town Planner which is a Class I post and to which post he was selected by direct recruitment through GPSC. He further submitted that though initially the petitioner was directly recruited through GPSC as Assistant Town Planner Class II, in the year 1966, subsequently, he again applied for direct recruitment through GPSC and was selected and appointed as Deputy Town Planner Class I in the year 1978. He, therefore, contended that the post which the petitioner held at the time when the departmental inquiry was being conducted against him was a direct

selection post and the petitioner was appointed to the said post through the process of direct recruitment. He, therefore, submitted that by way of penalty, the petitioner could not have been reverted to a lower post than the one on which the petitioner was appointed by direct recruitment. For the said purpose, he placed reliance on a decision of the Hon'ble Supreme Court in the case of Hussain Sasansaheb v. State of Maharashtra, AIR 1987 SC 1627. Additionally he also submitted that the charges leveled against the petitioner as held to have been proved through the departmental inquiry were otherwise also not very serious. He submitted that at best the charge that was concluded against the petitioner can be treated to be one of negligence and not of malafide intentional disregard to the instructions. He submitted that the petitioner has superannuated since long and is presently aged about 70 years. He, therefore, submitted that the respondents should take a liberal view and should not penalise the petitioner with a grave penalty at this distant point of time.

3.As against this, learned AGP Ms.Raval supported the impugned decision. She submitted that the charges were held to have been proved against the petitioner and the

competent authority had imposed penalty as available under the rules. She, therefore, submitted that the petition should be rejected.

4. Having heard the learned advocates appearing for the parties, I find considerable force in the submissions made by learned advocate Shri Jani for the petitioner that the petitioner being directly recruited to the post of Deputy Town Planner Class I could not have been reverted to the lower post than the one to which he was recruited. The ratio of the decision of the Hon'ble Supreme Court in the case of Hussain Sasansaheb (supra) would squarely apply in the facts of the present case. The impugned order of penalty would, therefore, be liable to be and is hereby quashed and set aside on this short ground alone.

5. The entire proceedings, however, cannot be concluded since the penalty is being set aside on technical ground. It would, therefore, be open to the Competent Authority to reconsider the entire issue of penalty to be imposed on the petitioner and pass fresh orders in accordance with law. Prima facie, I find some force in the submission of learned advocate Shri Jani that the charges as held to have been proved would not amount to grave charge of intentional disregard to the rules and

circulars. The Inquiry Officer in his report had specifically come to the conclusion that there was lack of malafides on the part of the petitioner. No notice of disagreement was issued by the Disciplinary Authority to differ from the conclusions of the Inquiry Officer. I am sure, the Competent Authority will bear in mind all these aspects of the matter including the fact that the incident is an old one and that the petitioner is an aged person and retired from Government service since long. Bearing in mind all these aspects of the matter, the Competent Authority shall pass order of penalty if so found necessary against the petitioner within a period of three months from the date of receipt of a copy of this order. After the exercise is over as mentioned above, it will be open for the respondents to consider the request of the petitioner for opening of the sealed cover for his promotion from due date. The decision taken by the Government in the aforesaid background will be open for the petitioner to question through fresh legal proceedings if so found necessary.

6. In the result, the petition is allowed subject to the above observations. The impugned order of penalty is

quashed. The petitioner shall be entitled to all consequential benefits flowing there-from. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)